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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,410	11/03/2003	Wilbur H. Highleyman	9203-21U4	5788

570 7590 08/14/2006

AKIN GUMP STRAUSS HAUER & FELD L.L.P.
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2005 MARKET STREET, SUITE 2200
PHILADELPHIA, PA 19103

EXAMINER

ROBINSON, GRETA LEE

ART UNIT	PAPER NUMBER
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2168

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/700,410

Applicant(s)

HIGHLEYMAN ET AL.

Examiner

Greta L. Robinson

Art Unit

2168

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 2-12, 17-21 and 25-32.
Claim(s) rejected: 1, 13-16 and 22-24.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) _____
13. ☐ Other: _____

Greta Robinson
Primary Examiner
August 9, 2006

Continuation of 5. Applicant's reply has overcome the following rejection(s): claim objections under 37 CFR 1.75; and claim rejections under 35 USC 112 second paragraph.

Continuation of 11. does NOT place the application in condition for allowance because: Applicants response overcomes the objection of claims 16-28 under 37 CFR 1.75; and the rejections of claims 1-32 under 35 USC 112 second paragraph. However the examiner respectfully maintains the rejection of claims 1, 13-15, 16 and 22-24 under 35 USC 103(a) citing Leyman et al. as outlined in the Office Action mailed May 12, 2006 page 4-6. Leyman et al. provides for the limitation "means to allow one or more nodes to take over processing capacity of a node that becomes lost, the availability of the split processing system being greater than the availability of an unsplit system wherein all of the processors are located at a single node". Leyman et al. teaches step (c) means to allow one or more of the nodes to take over processing capacity of a node that becomes lost [note: concern with specific issues of improving availability col. 2 lines 66 through col. 3 line 12; Parallel databases and partitioned tables allow the system to work on part of the data, allow concurrent access, and a single query to a partitioned database can initiate multiple parallel operations, and allow queries to run on multiple processors which reduces elapsed time for a query see col. 3 lines 40-58 (this step teaches partitioned database reduces time); optimal use of parallel processors col. 4 lines 1-5; col. 7 line 60 through col. 8 line 2; col. 10 line 63 through col.11 line 49]. Although Leymann et al. teaches the invention as cited they do not explicitly teach that the availability of the split processing system being greater than the availability of an unsplit system. Leymann et al. teaches an audit trail that contains a record for each event such as start or termination of a process or an activity to capture the history. Events of any type occurring are candidates for the audit trail [see: column 8 lines 47-65]. Leymann et al. also teaches that the performance of the system impacts can be minimized through splitting [note: column 10 lines 25-27, column 10 lines 61-65]. Leymann et al. teaches evaluation of all activity and considers failing conditions. All information is stored in the database [column 8 lines 32-46]. It would have been obvious to one of ordinary skill at the time of the invention to conclude that an unsplit system would have a higher failure number (i.e. unavailable) than a split system since Leymann et al. teaches performance impacts are decreased by the workflow system or split [note: column 10 lines 25-27] and that the system stores all activity types including start and end (i.e. recovery or failures).

Claims 2-12, 17-21, and 25-32 are noted as allowed if amended into independent form to include all of the limitations of there respective base claim and any intervening claims.